

EXHIBIT 35

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

MERLE D. LEWIS,

Defendant.

Civil Action Number:

FINAL JUDGMENT AS
TO DEFENDANT
MERLE D. LEWIS

The Securities and Exchange Commission having filed a Complaint and Defendant Merle D. Lewis ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or

otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)], by using any means or instruments of transportation or communication in interstate commerce or by using the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud, or
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

II.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;

- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Rule 13b2-2 under the Exchange Act [17 C.F.R. § 240.13b2-2] by directly or indirectly making or causing to be made materially false or misleading statements, or omitting to state or causing other persons to omit to state material facts necessary in order to make statements made, in light of the circumstances under which such statements are made, not misleading to an accountant in connection with:

(1) an audit or examination of the financial statements of an issuer required to be made pursuant to the Exchange Act; or (2) the preparation or filing of any document or report required to be filed with the Commission pursuant to the Exchange Act or otherwise.

IV.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section

13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 promulgated thereunder [17 C.F.R. § 240.13b2-1] by:

- (a) falsifying or causing to be falsified any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act; or
- (b) knowingly circumventing or knowingly failing to implement a system of internal accounting controls.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-11 and 240.13a-13], by knowingly providing substantial assistance to an issuer that:

- (a) fails to file with the Commission any report or statement required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act and the rules and regulations promulgated thereunder, or information and documents required by the Commission to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to Section 12 of the Exchange Act;

- (b) fails, in addition to the information expressly required to be included in a statement or report, to add such further material information as is necessary to make the required statements, in the light of the circumstances under which they were made not misleading;
- (c) fails to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the issuer; and
- (d) fails to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: transactions are executed in accordance with management's general or specific authorization; transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets; access to assets is permitted only in accordance with management's general or specific authorization; and the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty in the amount of \$150,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]. Defendant shall make this payment within ten (10) business days after entry of this Final Judgment by certified

check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Merle D. Lewis as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Defendant is prohibited for five years following the date of entry of this Final Judgment, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

X.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: _____

UNITED STATES DISTRICT JUDGE

EXHIBIT 36

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

RICHARD R. HYLLAND,

Defendant.

Civil Action Number:

FINAL JUDGMENT AS
TO DEFENDANT
RICHARD R. HYLLAND

The Securities and Exchange Commission having filed a Complaint and Defendant Richard R. Hylland ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

L

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or

otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], by using any means or instruments of transportation or communication in interstate commerce or by using the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud, or
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

II.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;

- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

III.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 promulgated thereunder [17 C.F.R. § 240.13b2-1] by:

- (a) falsifying or causing to be falsified any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act; or
- (b) knowingly circumventing or knowingly failing to implement a system of internal accounting controls.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a),

78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-11 and 240.13a-13], by knowingly providing substantial assistance to an issuer that:

- (a) fails to file with the Commission any report or statement required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act and the rules and regulations promulgated thereunder, or information and documents required by the Commission to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to Section 12 of the Exchange Act;
- (b) fails, in addition to the information expressly required to be included in a statement or report, to add such further material information as is necessary to make the required statements, in the light of the circumstances under which they were made not misleading;
- (c) fails to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the issuer; and
- (d) fails to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: transactions are executed in accordance with management's general or specific authorization; transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets; access to

assets is permitted only in accordance with management's general or specific authorization; and the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty in the amount of \$150,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]. Defendant shall make this payment within ten (10) business days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Richard R. Hylland as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

VI

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Defendant is prohibited for five years following the date of entry of this Final Judgment, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15

U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

IX.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: _____

UNITED STATES DISTRICT JUDGE

EXHIBIT 37

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

KURT D. WHITESEL,

Defendant.

Civil Action Number:

**FINAL JUDGMENT AS
TO DEFENDANT
KURT D. WHITESEL**

The Securities and Exchange Commission having filed a Complaint and Defendant Kurt D. Whitesel ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or

otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)], by using any means or instruments of transportation or communication in interstate commerce or by using the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud, or
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

II.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;

- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Rule 13b2-2 under the Exchange Act [17 C.F.R. § 240.13b2-2] by directly or indirectly making or causing to be made materially false or misleading statements, or omitting to state or causing other persons to omit to state material facts necessary in order to make statements made, in light of the circumstances under which such statements are made, not misleading to an accountant in connection with:

(1) an audit or examination of the financial statements of an issuer required to be made pursuant to the Exchange Act; or (2) the preparation or filing of any document or report required to be filed with the Commission pursuant to the Exchange Act or otherwise.

IV.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section

13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 promulgated thereunder [17 C.F.R. § 240.13b2-1] by:

- (a) falsifying or causing to be falsified any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act; or
- (b) knowingly circumventing or knowingly failing to implement a system of internal accounting controls.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-11 and 240.13a-13], by knowingly providing substantial assistance to an issuer that:

- (a) fails to file with the Commission any report or statement required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act and the rules and regulations promulgated thereunder, or information and documents required by the Commission to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to Section 12 of the Exchange Act;

- (b) fails, in addition to the information expressly required to be included in a statement or report, to add such further material information as is necessary to make the required statements, in the light of the circumstances under which they were made not misleading;
- (c) fails to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the issuer; and
- (d) fails to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: transactions are executed in accordance with management's general or specific authorization; transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets; access to assets is permitted only in accordance with management's general or specific authorization; and the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty in the amount of \$25,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]. Defendant shall make this payment within three-hundred and sixty (360) days after entry of this Final Judgment by certified

check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Kurt D. Whitesel as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Defendant is prohibited for five years following the date of entry of this Final Judgment, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

X.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: _____, _____

UNITED STATES DISTRICT JUDGE

EXHIBIT 38

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

KIPP D. ORME,

Defendant.

Civil Action Number:

**FINAL JUDGMENT AS
TO DEFENDANT
KIPP D. ORME**

The Securities and Exchange Commission having filed a Complaint and Defendant Kipp D. Orme ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or

otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], by using any means or instruments of transportation or communication in interstate commerce or by using the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud, or
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

II.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;

- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Rule 13b2-2 under the Exchange Act [17 C.F.R. § 240.13b2-2] by directly or indirectly making or causing to be made materially false or misleading statements, or omitting to state or causing other persons to omit to state material facts necessary in order to make statements made, in light of the circumstances under which such statements are made, not misleading to an accountant in connection with:

(1) an audit or examination of the financial statements of an issuer required to be made pursuant to the Exchange Act; or (2) the preparation or filing of any document or report required to be filed with the Commission pursuant to the Exchange Act or otherwise.

IV.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Rule

13b2-1 promulgated under the Exchange Act [17 C.F.R. § 240.13b2-1] by falsifying or causing to be falsified any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-11 and 240.13a-13], by knowingly providing substantial assistance to an issuer that:

- (a) fails to file with the Commission any report or statement required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act and the rules and regulations promulgated thereunder, or information and documents required by the Commission to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to Section 12 of the Exchange Act;
- (b) fails, in addition to the information expressly required to be included in a statement or report, to add such further material information as is necessary to make the required statements, in the light of the circumstances under which they were made not misleading;

- (c) fails to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the issuer; and
- (d) fails to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: transactions are executed in accordance with management's general or specific authorization; transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets; access to assets is permitted only in accordance with management's general or specific authorization; and the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty in the amount of \$100,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]. Defendant shall make this payment within ten (10) business days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter

identifying Kipp D. Orme as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Defendant is prohibited for five years following the date of entry of this Final Judgment, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

X.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: _____, _____

UNITED STATES DISTRICT JUDGE

EXHIBIT 39
REDACTED IN ITS ENTIRETY

EXHIBIT 40

Westlaw.

4/16/2007 NLJ 3, (Col. 3)
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Page 1

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In Brief

JUDICIAL CONFERENCE REJECTS SELECTIVE WAIVER

A FEDERAL JUDICIAL committee has given thumbs down to changes in evidence Rule 502 that would have allowed partial waivers of attorney-client privilege.

The decision came on April 13 during a meeting of the Judicial Conference Advisory Committee on Rules of Evidence in San Diego, according to Dan Capra, committee reporter and Fordham University School of Law professor.

Companies seeking breaks for cooperating with government investigations have attempted to use partial waivers of attorney-client privilege to supply results of internal investigations but limit their use to government investigators.

From ALM staff and wire services

4/16/2007 NLJ 3, (Col. 3)

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EXHIBIT 41

Final Version, Rule 502, April 13, 2007

1 Rule 502. Attorney-Client Privilege and Work Product; Limitations on Waiver

2 The following provisions apply, under the circumstances set out, to disclosure of a communication
 3 or information protected by an attorney-client privilege or as work product.

4 **(a) Scope of a waiver.** — If the disclosure is made in a federal proceeding or to a federal office
 5 or agency and waives the attorney-client privilege or work-product protection, the waiver extends to an
 6 undisclosed communication or information in any federal or state proceeding only if

7 (1) the waiver is intentional;
 8 (2) the disclosed and undisclosed communication or information concern the same subject
 9 matter; and
 10 (3) they ought in fairness to be considered together.

11 **(b) Inadvertent disclosure.** — If the disclosure is made in a federal proceeding or to a federal
 12 office or agency, the disclosure does not operate as a waiver in a federal or state proceeding if:

13 (1) the disclosure is inadvertent;
 14 (2) the holder of the privilege or work-product protection took reasonable steps to prevent
 15 disclosure; and
 16 (3) the holder took reasonable and prompt steps to rectify the error, including (if
 17 applicable) following Fed. R. Civ. P. 26(b)(5)(B).

18 **(c) Controlling effect of court orders.** — A federal court may order that the privilege or work-
 19 product protection is not waived by disclosure connected with the litigation pending before the court. The
 20 order governs all persons and entities in all federal or state proceedings, whether or not they were parties
 21 to the litigation.

22 **(d) Controlling effect of party agreements.** — An agreement on the effect of disclosure is
 23 binding on the parties to the agreement, but not on other parties unless it is incorporated into a court order.

24 **(e) Definitions.** — In this rule:

25 1) “attorney-client privilege” means the protection that applicable law provides for
 26 confidential attorney-client communications; and
 27 2) “work-product protection” means the protection that applicable law provides for
 28 tangible material or its intangible equivalent, prepared in anticipation of litigation or for trial.

29 **(f) Federal or state law as the rule of decision.** — Notwithstanding Rule 501, this rule applies
 30 even if state law provides the rule of decision.

31 **(g) State proceedings.** — Notwithstanding Rules 101 and 1101, this rule applies to state

32 proceedings, under the circumstances set out in the rule.

33 **(h) Disclosures made in a state proceeding.** — When the disclosure is made in a state
 34 proceeding, is not the subject of an order of the state court, and the disclosed communication or
 35 information is offered in a federal proceeding, the disclosure is not a waiver if it:

36 (1) would not be a waiver under this rule if it had been made in a federal proceeding; or
 37 (2) is not a waiver under the law of the state where the disclosure occurred.

38 **Committee Note**

39 This new rule has two major purposes:

40 1) It resolves some longstanding disputes in the courts about the effect of certain
 41 disclosures of communications or information protected by the attorney-client privilege or the work
 42 product doctrine—specifically those disputes involving inadvertent disclosure and subject matter
 43 waiver.

44 2) It responds to the widespread complaint that litigation costs necessary to protect against
 45 waiver of attorney-client privilege or work product have become prohibitive due to the concern
 46 that any disclosure (however innocent or minimal) will operate as a subject matter waiver of all
 47 protected communications or information. This concern is especially troubling in cases involving
 48 electronic discovery. *See, e.g., Rowe Entertainment, Inc. v. William Morris Agency*, 205
 49 F.R.D. 421, 425-26 (S.D.N.Y. 2002) (finding that in a case involving the production of e-mail,
 50 the cost of pre-production review for privileged and work product would cost one defendant
 51 \$120,000 and another defendant \$247,000, and that such review would take months). *See also*
 52 *Report to the Judicial Conference Standing Committee on Rules of Practice and Procedure*
 53 *by the Advisory Committee on the Federal Rules of Civil Procedure*, September 2005 at 27
 54 (“The volume of information and the forms in which it is stored make privilege determinations more
 55 difficult and privilege review correspondingly more expensive and time-consuming yet less likely
 56 to detect all privileged information.”); *Hopson v. City of Baltimore*, 232 F.R.D. 228, 244 (D.Md.
 57 2005) (electronic discovery may encompass “millions of documents” and to insist upon “record-
 58 by-record pre-production privilege review, on pain of subject matter waiver, would impose upon
 59 parties costs of production that bear no proportionality to what is at stake in the litigation”).

60 The rule seeks to provide a predictable, uniform set of standards under which parties can
 61 determine the consequences of a disclosure of a communication or information covered by the

62 attorney-client privilege or work product protection. Parties to litigation need to know, for
 63 example, that if they exchange privileged information pursuant to a confidentiality order, the court's
 64 order will be enforceable. Moreover, if a federal court's confidentiality order is not enforceable in
 65 a state court then the burdensome costs of privilege review and retention are unlikely to be
 66 reduced.

67 The Committee is well aware that a privilege rule proposed through the rulemaking process
 68 cannot bind state courts, and indeed that a rule of privilege cannot take effect through the ordinary
 69 rulemaking process. See 28 U.S.C. § 2074(b). It is therefore anticipated that Congress must enact
 70 this rule directly, through its authority under the Commerce Clause. Cf. Class Action Fairness Act
 71 of 2005, 119 Stat. 4, PL 109-2 (relying on Commerce Clause power to regulate state class
 72 actions).

73 The rule makes no attempt to alter federal or state law on whether a communication or
 74 information is protected under the attorney-client privilege or work product immunity as an initial
 75 matter. Moreover, while establishing some exceptions to waiver, the rule does not purport to
 76 supplant applicable waiver doctrine generally.

77 The rule governs only certain waivers by disclosure. Other common-law waiver doctrines
 78 may result in a finding of waiver even where there is no disclosure of privileged information or work
 79 product. See, e.g., *Nguyen v. Excel Corp.*, 197 F.3d 200 (5th Cir. 1999) (reliance on an advice
 80 of counsel defense waives the privilege with respect to attorney-client communications pertinent
 81 to that defense); *Ryers v. Burleson*, 100 F.R.D. 436 (D.D.C. 1983) (allegation of lawyer
 82 malpractice constituted a waiver of confidential communications under the circumstances). The rule
 83 is not intended to displace or modify federal common law concerning waiver of privilege or work
 84 product where no disclosure has been made.

85 **Subdivision (a).** The rule provides that a voluntary disclosure in a federal proceeding or
 86 to a federal office or agency, if a waiver, generally results in a waiver only of the communication
 87 or information disclosed; a subject matter waiver (of either privilege or work product) is reserved
 88 for those unusual situations in which fairness requires a further disclosure of related, protected
 89 information, in order to protect against a selective and misleading presentation of evidence to the
 90 disadvantage of the adversary. See, e.g., *In re von Bulow*, 828 F.2d 94 (2d Cir. 1987)
 91 (disclosure of privileged information in a book did not result in unfairness to the adversary in a
 92 litigation, therefore a subject matter waiver was not warranted); *In re United Mine Workers of*
 93 *America Employee Benefit Plans Litig.*, 159 F.R.D. 307, 312 (D.D.C. 1994) (waiver of work
 94 product limited to materials actually disclosed, because the party did not deliberately disclose
 95 documents in an attempt to gain a tactical advantage). Thus, subject matter waiver is limited to
 96 situations in which a party intentionally puts protected information into the litigation in a selective,
 97 misleading and unfair manner. It follows that an inadvertent disclosure of protected information can
 98 never result in a subject matter waiver. See Rule 502(b). The rule rejects the result in *In re Sealed*

Case, 877 F.2d 976 (D.C.Cir. 1989), which held that inadvertent disclosure of documents during discovery automatically constituted a subject matter waiver.

The language concerning subject matter waiver—"ought in fairness"—is taken from Rule 106, because the animating principle is the same. A party that makes a selective, misleading presentation that is unfair to the adversary opens itself to a more complete and accurate presentation. *See, e.g., United States v. Branch*, 91 F.3d 699 (5th Cir. 1996) (under Rule 106, completing evidence was not admissible where the party's presentation, while selective, was not misleading or unfair).

To assure protection and predictability, the rule provides that if a disclosure is made at the federal level, the federal rule on subject matter waiver governs subsequent state court determinations on the scope of the waiver by that disclosure.

Subdivision (b). Courts are in conflict over whether an inadvertent disclosure of a communication or information protected as privileged or work product constitutes a waiver. A few courts find that a disclosure must be intentional to be a waiver. Most courts find a waiver only if the disclosing party acted carelessly in disclosing the communication or information and failed to request its return in a timely manner. And a few courts hold that any inadvertent disclosure of a communication or information protected under the attorney-client privilege or as work product constitutes a waiver without regard to the protections taken to avoid such a disclosure. *See generally Hopson v. City of Baltimore*, 232 F.R.D. 228 (D.Md. 2005) for a discussion of this case law.

The rule opts for the middle ground: inadvertent disclosure of protected communications or information in connection with a federal proceeding or to a federal office or agency does not constitute a waiver if the holder took reasonable steps to prevent disclosure and also took reasonable and prompt steps to rectify the error. This position is in accord with the majority view on whether inadvertent disclosure is a waiver. See, e.g., *Zapata v. IPB, Inc.*, 175 F.R.D. 574, 576-77 (D. Kan. 1997) (work product); *Hydraflow, Inc. v. Enidine, Inc.*, 145 F.R.D. 626, 637 (W.D.N.Y. 1993) (attorney-client privilege); *Edwards v. Whitaker*, 868 F.Supp. 226, 229 (M.D. Tenn. 1994) (attorney-client privilege). The rule establishes a compromise between two competing premises. On the one hand, a communication or information covered by the attorney-client privilege or work product protection should not be treated lightly. On the other hand, a rule imposing strict liability for an inadvertent disclosure threatens to impose prohibitive costs for privilege review and retention, especially in cases involving electronic discovery.

The rule applies to inadvertent disclosures made to a federal office or agency, including but not limited to an agency that is acting in the course of its regulatory, investigative or enforcement

134 authority. The consequences of waiver, and the concomitant costs of pre-production privilege
 135 review, can be as great with respect to such disclosures as they are in litigation.

136 Cases such as *Lois Sportswear, U.S.A., Inc. v. Levi Strauss & Co.*, 104 F.R.D. 103,
 137 105 (S.D.N.Y. 1985) and *Hartford Fire Ins. Co. v. Garvey*, 109 F.R.D. 323, 332 (N.D.Cal.
 138 1985), set out a multi-factor test for determining whether inadvertent disclosure is a waiver– the
 139 reasonableness of precautions taken, the time taken to rectify the error, the scope of discovery, the
 140 extent of disclosure and the overriding issue of fairness. The rule does not explicitly codify that test,
 141 because it is really a set of non-determinative guidelines that vary from case to case. The rule is
 142 flexible enough to accommodate any of those factors. Other relevant considerations include the
 143 number of documents to be reviewed and the time constraints for production. Depending on the
 144 circumstances, a holder that uses advanced analytical software applications and linguistic tools may
 145 be found to have taken “reasonable steps” to prevent disclosure of protected communications or
 146 information. Efficient systems of records management implemented before litigation will also be
 147 relevant.

148 The rule does not require the producing party to engage in a post-production review to
 149 determine whether any protected communication or information has been produced by mistake.
 150 But the rule does require the producing party to follow up on any obvious indications that a
 151 protected communication or information has been produced inadvertently.

152
 153 The rule is intended to apply in all federal court proceedings, including court-annexed and
 154 court-ordered arbitrations.

155 The rule refers to “inadvertent” disclosure, as opposed to using any other term, because
 156 the word “inadvertent” is widely used by courts and commentators to cover mistaken or
 157 unintentional disclosures of communications or information covered by the attorney-client privilege
 158 or the work product protection. *See, e.g., Manual for Complex Litigation Fourth* § 11.44
 159 (Federal Judicial Center 2004) (referring to the “consequences of inadvertent waiver”); *Allread*
 160 *v. City of Grenada*, 988 F.2d 1425, 1434 (5th Cir. 1993) (“There is no consensus, however, as
 161 to the effect of inadvertent disclosure of confidential communications.”).

162 **Subdivision (c).** Confidentiality orders are becoming increasingly important in limiting the
 163 costs of privilege review and retention, especially in cases involving electronic discovery. *See*
 164 *Manual for Complex Litigation Fourth* § 11.446 (Federal Judicial Center 2004) (noting that fear
 165 of the consequences of waiver “may add cost and delay to the discovery process for all sides” and
 166 that courts have responded by encouraging counsel “to stipulate at the outset of discovery to a
 167 ‘nonwaiver’ agreement, which they can adopt as a case-management order.”). But the utility of
 168 a confidentiality order in reducing discovery costs is substantially diminished if it provides no
 169 protection outside the particular litigation in which the order is entered. Parties are unlikely to be
 170 able to reduce the costs of pre-production review for privilege and work product if the

171 consequence of disclosure is that the communications or information could be used by non-parties
 172 to the litigation.

173 There is some dispute on whether a confidentiality order entered in one case can bind non-
 174 parties from asserting waiver by disclosure in a separate litigation. *See generally Hopson v. City*
175 of Baltimore, 232 F.R.D. 228 (D.Md. 2005) for a discussion of this case law. The rule provides
 176 that when a confidentiality order governing the consequences of disclosure in that case is entered
 177 in a federal proceeding, its terms are enforceable against non-parties in any federal or state
 178 proceeding. For example, the court order may provide for return of documents without waiver
 179 irrespective of the care taken by the disclosing party; the rule contemplates enforcement of "claw-
 180 back" and "quick peek" arrangements as a way to avoid the excessive costs of pre-production
 181 review for privilege and work product. As such, the rule provides a party with a predictable
 182 protection that is necessary to allow that party to limit the prohibitive costs of privilege and work
 183 product review and retention.

184 Under the rule, a confidentiality order is enforceable whether or not it memorializes an
 185 agreement among the parties to the litigation. Party agreement should not be a condition of
 186 enforceability of a federal court's order.

187
 188 **Subdivision (d).** Subdivision(d) codifies the well-established proposition that parties can
 189 enter an agreement to limit the effect of waiver by disclosure between or among them. *See, e.g.,*
190 Dowd v. Calabrese, 101 F.R.D. 427, 439 (D.D.C. 1984) (no waiver where the parties stipulated
 191 in advance that certain testimony at a deposition "would not be deemed to constitute a waiver of
 192 the attorney-client or work product privileges"); *Zubulake v. UBS Warburg LLC*, 216 F.R.D.
 193 280, 290 (S.D.N.Y. 2003) (noting that parties may enter into "so-called 'claw-back' agreements
 194 that allow the parties to forego privilege review altogether in favor of an agreement to return
 195 inadvertently produced privilege documents"). Of course such an agreement can bind only the
 196 parties to the agreement. The rule makes clear that if parties want protection in a separate litigation
 197 from a finding of waiver by disclosure, the agreement must be made part of a court order.

198
 199 **Subdivision (e).** The rule's coverage is limited to attorney-client privilege and work
 200 product. The operation of waiver by disclosure, as applied to other evidentiary privileges, remains
 201 a question of federal common law. Nor does the rule purport to apply to the Fifth Amendment
 privilege against compelled self-incrimination.

202 The definition of work product "materials" is intended to include both tangible and
 203 intangible information. *See In re Cendant Corp. Sec. Litig.*, 343 F.3d 658, 662 (3d Cir. 2003)
 204 ("It is clear from *Hickman* that work product protection extends to both tangible and intangible
 205 work product").

231 The rule does not address the enforceability of a state court confidentiality order in a
232 federal proceeding, as that question is covered both by statutory law and principles of federalism
233 and comity. *See* 28 U.S.C. § 1738 (providing that state judicial proceedings “shall have the same
234 full faith and credit in every court within the United States . . . as they have by law or usage in the
235 courts of such State . . . from which they are taken.”). *See also* 6 MOORE’S FEDERAL PRACTICE
236 § 26.106[1] n.5.2 (3d ed. 2006), citing *Tucker v. Ohtsu Tire & Rubber Co.*, 191 F.R.D. 495,
237 499 (D.Md. 2000) (noting that a federal court considering the enforceability of a state
238 confidentiality order is “constrained by principles of comity, courtesy, and . . . federalism”). Thus,
239 a state court order finding no waiver in connection with a disclosure made in a state court
240 proceeding is enforceable under existing law in subsequent federal proceedings.

EXHIBIT 42

Statutory language on selective waiver, 4/13/2007

(a) Selective waiver. — In a federal [or state] proceeding, the disclosure of a communication or information protected by the attorney client privilege or as work product — when made for any purpose to a federal office or agency in the course of any regulatory, investigative, or enforcement process — does not waive the privilege or work-product protection in favor of any person or entity other than a [the] federal office or agency.

(b) Rule of construction. — This rule does not:

- 1) limit or expand a government office or agency's authority to disclose communications or information to other government offices or agencies or as otherwise authorized or required by law; or
- 2) limit any protection against waiver provided in any other Act of Congress.

(c) Definitions. — In this Act:

- 1) “attorney-client privilege” means the protection that applicable law provides for confidential attorney-client communications; and
- 2) “work-product protection” means the protection that applicable law provides for tangible material or its tangible equivalent, prepared in anticipation of litigation or for trial.

Committee Note on Selective Waiver

Courts are in conflict over whether disclosure of privileged or protected communications or information to a government office or agency conducting an investigation of the client constitutes a general waiver of the communications or information disclosed. Most courts have rejected the concept of “selective waiver,” holding that waiver of privileged or protected communications or information to a government office or agency constitutes a waiver for all purposes and to all parties. *See, e.g., Westinghouse Electric Corp. v. Republic of the Philippines*, 951 F.2d 1414 (3d Cir. 1991). Other courts have held that selective waiver is enforceable if the disclosure is made subject to a confidentiality agreement with the government office or agency. *See, e.g., Teachers Insurance & Annuity Association of America v. Shamrock Broadcasting Co.*, 521 F. Supp. 638 (S.D.N.Y. 1981). And a few courts have held that disclosure of privileged or protected communications or information to the government does not constitute a general waiver, so that the privilege or protection remains applicable against other parties. *See, e.g., Diversified Industries, Inc. v. Meredith*, 572 F.2d 596 (8th Cir. 1977).

The rule resolves this conflict by providing that disclosure of protected communications or information to a federal office or agency exercising regulatory, investigative or enforcement authority does not constitute a waiver of attorney-client privilege or work product protection as to any person or entity other than a [the] federal public office or agency; that protection of selective waiver applies when the disclosed communication or information is subsequently offered in [either] federal [or state court].

The rule does not purport to affect the disclosure of protected communications or information after receipt by the federal office or agency. The rule does, however, provide protection from waiver in favor of anyone other than federal offices or agencies, regardless of the extent of disclosure of the communications or information by any such office or agency. Even if the communications or information are used in an enforcement proceeding and so become publicly available, the communications or information will continue to be protected as against other persons or entities.

The rule provides that when protected communications or information are disclosed to a “federal office or agency” the disclosure does not operate as a waiver to any person or entity other than a [the] federal office or agency. As such, a disclosure covered by the rule does not operate as a waiver in any congressional investigation or hearing.

The rule is not intended to limit or affect any other Act of Congress that provides for selective waiver protection for disclosures made to government agencies or offices. *See, e.g.*, Financial Services Regulatory Relief Act of 2006, Pub.L.No. 109-351, § 607, 120 Stat. 1966, 1981 (2006).

EXHIBIT 43

ITEM	BATES RANGE	DATE PRODUCED	DATE RETURN DEMANDED	PRIVILEGE	LOG NUMBER	DATE LOGGED	ADMITTEDLY DISCLOSED TO SEC	OTHERWISE NON-PRIVILEGED ON FACE OF LOG?
A	NOR053296 - NOR053297	4/5/2007	4/5/2007	436	3232007		Yes	Yes
B	NOR066670 - NOR066671	1/19/2007		4/5/2007	436	3232007		Yes
C	NOR075185 - NOR075186	1/19/2007		4/5/2007	26	3232007		Yes
D	NOR086411 - NOR086412	1/19/2007		4/5/2007	28	3232007		Yes
E	NOR086481 - NOR086559	1/19/2007		4/5/2007	28	3232007		Yes
F	NOR131455	1/25/2007		4/5/2007	31,27	3232007		Yes
G	NOR135865 - NOR135867	1/25/2007		4/5/2007	184	3232007		Yes
H	NOR142061	1/25/2007		4/5/2007	1881	3232007		Yes
I	NOR142663 - NOR149264	1/25/2007		4/5/2007	4122	3232007		Yes
J	NOR173136 - NOR173138	1/25/2007		4/5/2007	1381	3232007		Yes
K	NOR184691 - NOR184694	1/25/2007		4/5/2007	1381	3232007		Yes
L	NOR184858 - NOR184859	1/25/2007		4/5/2007	54	3232007		Yes
M	NOR185818 - NOR185820	1/25/2007		4/5/2007	41563	3232007		Yes
N	NOR187057 - NOR187058	1/25/2007		4/5/2007	191	3232007		Yes
O	NOR192884 - NOR192983	1/25/2007		4/5/2007	115	3232007		Yes
P	NOR193851 - NOR193853	1/25/2007		4/5/2007	1381	3232007		Yes
Q	NOR240405 - NOR240406	2/17/2007		4/5/2007	1	3232007		Yes
R	NOR265143	2/29/2007		4/5/2007	174	3232007		Yes
S	NOR275785	2/29/2007		4/5/2007	174	3232007		Yes
T	NOR374782 - NOR374792	3/5/2007		4/5/2007	1480	3232007		Yes
U	NOR4111338 - NOR411450	3/5/2007		4/5/2007	32	3232007		Yes
V	NOR441838 - NOR441832	3/14/2007		4/5/2007	966,987	3232007		Yes
W	NOR452812	3/14/2007		4/5/2007	119	3232007		Yes
X	NOR458213 - NOR458215	3/14/2007		4/5/2007	1381	3232007		Yes
Y	NOR458221 - NOR458226	3/14/2007		4/5/2007	120	3232007		Yes
Z	NOR459119 - NOR459120	3/14/2007		4/5/2007	1455	3232007		Yes
AA	NOR481063 - NOR481064	3/23/2007		4/5/2007	493	3232007		Yes
BB	NOR481073	3/23/2007		4/5/2007	495	3232007		Yes
CC	NOR481065 - NOR481066	3/23/2007		4/5/2007	?	3232007		?
DD	NOR482791 - NOR482793	3/23/2007		4/5/2007	484	3232007		Yes
EE	NOR463654	3/23/2007		4/5/2007	1747	3232007		Yes
FF	NOR160575 - NOR160576	1/25/2007		4/5/2007	163,1732	3232007 + 4/5/2007		Yes
GG	NOR371624 - NOR372806	3/23/2007		4/5/2007	1467,1669	3232007 + 4/5/2007		Yes, Yes
HH	NOR374829 - NOR375523	3/23/2007		4/5/2007	1467,1669	3232007 + 4/5/2007		Yes, Yes
II	NOR413446 - NOR413500	3/23/2007		4/5/2007	1467,1669	3232007 + 4/5/2007		Yes, Yes
JJ	NOR414057 - NOR414114	3/24/2007		4/5/2007	1467,1669	3232007 + 4/5/2007		Yes, Yes
KK	NOR452820	3/24/2007		4/5/2007	?	3232007		?
LL	NOR121152 - NOR121173	1/19/2007		4/5/2007	?	3232007		?
MM	NOR452810 - NOR452811	3/14/2007		4/5/2007	?	3232007		?
NN	NOR452820	3/14/2007		4/5/2007	?	3232007		?
OO	NOR063216 - NOR063217	1/19/2007		4/5/2007	1729	4/5/2007		Yes
PP	NOR067845 - NOR067846	1/19/2007		4/5/2007	1729	4/5/2007		Yes
QQ	NOR072813 - NOR072814	1/19/2007		4/5/2007	1729	4/5/2007		Yes
RR	NOR072815 - NOR072816	1/19/2007		4/5/2007	1729	4/5/2007		Yes
SS	NOR073773 - NOR073774	1/19/2007		4/5/2007	1729	4/5/2007		Yes
TT	NOR076260 - NOR076261	1/19/2007		4/5/2007	1729	4/5/2007		Yes
UU	NOR077838 - NOR077839	1/19/2007		4/5/2007	1729	4/5/2007		Yes
VV	NOR081375 - NOR081376	1/19/2007		4/5/2007	1729	4/5/2007		Yes
WW	NOR087633 - NOR087634	1/19/2007		4/5/2007	1729	4/5/2007		Yes
XX	NOR088910 - NOR088911	1/19/2007		4/5/2007	1729	4/5/2007		Yes
YY	NOR092308 - NOR092309	1/19/2007		4/5/2007	1729	4/5/2007		Yes
ZZ	NOR117932 - NOR117933	1/19/2007		4/5/2007	1729	4/5/2007		Yes
AAA	NOR119158 - NOR119159	1/19/2007		4/5/2007	1729	4/5/2007		Yes
BBB	NOR124686 - NOR124687	1/19/2007		4/5/2007	1729	4/5/2007		Yes
CCC	NOR160675 - NOR160676	1/25/2007		4/5/2007	?	4/5/2007		?
DDD	NOR366792 - NOR366809	3/25/2007		4/5/2007	1733	4/5/2007		Yes

DOCUMENTS SUBJECT TO NORTHWESTERN RETURN DEMANDS

ITEM	BATES RANGE	DATE PRODUCED	DATE RETURN DEMANDED	PRIVILEGE LOG NUMBER	DATE LOGGED	ADMITTEDLY DISCLOSED TO SEC	OTHERWISE NON-PRIVILEGED ON FACE OF LOG?
EEE	NOR367014 - NOR367041	3/25/2007	4/5/2007	1734	4/5/2007	Yes	Yes
FFF	NOR367140 - NOR367151	3/25/2007	4/5/2007	1735	4/5/2007	Yes	Yes
GGG	NOR368029 - NOR368037	3/25/2007	4/5/2007	1737	4/5/2007	Yes	Yes
HHH	NOR368234 - NOR368261	3/25/2007	4/5/2007	1738	4/5/2007	Yes	Yes
III	NOR368363 - NOR368370	3/25/2007	4/5/2007	1735	4/5/2007	Yes	Yes
JJJ	NOR4053402 - NOR405403	3/25/2007	4/5/2007	1735	4/5/2007	Yes	Yes
KKK	NOR405928 - NOR405930	3/25/2007	4/5/2007	1738	4/5/2007	Yes	Yes
LLL	NOR406074 - NOR406075	3/25/2007	4/5/2007	1739	4/5/2007	Yes	Yes
MM	NOR406175 - NOR406180	3/25/2007	4/5/2007	1740	4/5/2007	Yes	Yes
NNN	NOR406416 - NOR406455	3/25/2007	4/5/2007	1741	4/5/2007	Yes	Yes
OOO	NOR458032 - NOR458035	3/25/2007	4/5/2007	1742	4/5/2007	Yes	Yes
PPP	NOR465466	3/25/2007	4/5/2007	1743	4/5/2007	Yes	Yes
QQQ	NOR479145 - NOR479146	3/25/2007	4/5/2007	1744	4/5/2007	Yes	Yes
RRR	NOR481065 - NOR481066	3/25/2007	4/5/2007	1745	4/5/2007	Yes	Yes
SSS	NOR374460 - NOR374530	3/25/2007	4/1/2007	1746	4/5/2007	Yes	Yes
TTT	NOR67847 - NOR67849	1/19/2007	4/1/2007	1747	4/5/2007	Yes	Yes
UUU	NOR86481 - NOR86559	1/19/2007	4/1/2007	1748	4/5/2007	Yes	Yes
VVV	NOR367071 - NOR367073	3/25/2007	4/1/2007	1749	4/5/2007	Yes	Yes
WWW	NOR367124 - NOR367130	3/25/2007	4/1/2007	1750	4/5/2007	Yes	Yes
XXX	NOR368038 - NOR368101	3/25/2007	4/1/2007	1751	4/5/2007	Yes	Yes
YYY	NOR440103 - NOR440107	3/25/2007	4/1/2007	1752	4/5/2007	Yes	Yes
ZZZ	NOR317953 - NOR317970	2/26/2007	4/1/2007	1753	4/5/2007	Yes	Yes
AAA	NOR317980 - NOR317984	2/26/2007	4/1/2007	1754	4/5/2007	Yes	Yes
BBB	NOR352700 - NOR352711	3/25/2007	4/1/2007	1755	4/24/2007	?	?
CCC	NOR352712 - NOR352713	3/25/2007	4/1/2007	1756	4/24/2007	?	?
DDD	NOR352714 - NOR352722	3/25/2007	4/1/2007	1757	4/24/2007	?	?
EEE	NOR356576 - NOR356577	3/25/2007	4/1/2007	1758	4/24/2007	?	?
FFF	NOR356795 - NOR356799	3/25/2007	4/1/2007	1759	4/24/2007	?	?
GGG	NOR405298 - NOR405308	3/25/2007	4/1/2007	1760	4/24/2007	?	?
HHH	NOR405532 - NOR405536	3/25/2007	4/1/2007	1761	4/24/2007	?	?
III	NOR405683 - NOR405684	3/25/2007	4/1/2007	1762	4/24/2007	?	?
JJJ	NOR405703	3/25/2007	4/1/2007	1763	4/24/2007	?	?
KKK	NOR405713 - NOR405718	3/25/2007	4/1/2007	1764	4/24/2007	?	?
LLL	NOR405739 - NOR405791	3/25/2007	4/1/2007	1765	4/24/2007	?	?
MM	NOR405850 - NOR405851	3/25/2007	4/1/2007	1766	4/24/2007	?	?
NNN	NOR405857 - NOR405859	3/25/2007	4/1/2007	1767	4/24/2007	?	?
OOO	NOR405920 - NOR405923	3/25/2007	4/1/2007	1768	4/24/2007	?	?
PPP	NOR406065 - NOR406066	3/25/2007	4/1/2007	1769	4/24/2007	?	?
QQQ	NOR406091 - NOR406099	3/25/2007	4/1/2007	1770	4/24/2007	?	?
RRR	NOR406103 - NOR406104	3/25/2007	4/1/2007	1771	4/24/2007	?	?
SSS	NOR406165 - NOR406169	3/25/2007	4/1/2007	1772	4/24/2007	?	?
TTT	NOR406170 - NOR406174	3/25/2007	4/1/2007	1773	4/24/2007	?	?
UUU	NOR406759 - NOR406797	3/25/2007	4/1/2007	1774	4/24/2007	?	?

EXHIBIT 44
REDACTED IN ITS ENTIRETY

EXHIBIT 45
REDACTED IN ITS ENTIRETY

EXHIBIT 46

v = disclosed to SEC per 4/9 letter

Initial List of Apparently Non-Privileged Documents by Document No.

Doc No. 2	✓	Doc No. 218	✓	Doc No. 352	✓	Doc No. 489	✓
Doc No. 16	✓	Doc No. 219	✓	Doc No. 361		Doc No. 531	✓
Doc No. 29		Doc No. 221	✓	Doc No. 364	✓	Doc No. 532	✓
Doc No. 41		Doc No. 223		Doc No. 367	✓	Doc No. 533	✓
Doc No. 55		Doc No. 224		Doc No. 368	✓	Doc No. 536	✓
Doc No. 56		Doc No. 229		Doc No. 369	✓	Doc No. 540	✓
Doc No. 61		Doc No. 231	✓	Doc No. 370	✓	Doc No. 541	✓
Doc No. 69		Doc No. 233		Doc No. 373	✓	Doc No. 543	✓
Doc No. 87		Doc No. 238		Doc No. 389	✓	Doc No. 547	✓
Doc No. 91	✓	Doc No. 239		Doc No. 391		Doc No. 562	
Doc No. 92		Doc No. 240		Doc No. 392	✓	Doc No. 563	✓
Doc No. 94		Doc No. 241		Doc No. 395	✓	Doc No. 564	✓
Doc No. 100	✓	Doc No. 243	✓	Doc No. 402	✓	Doc No. 565	✓
Doc No. 103		Doc No. 246		Doc No. 404		Doc No. 567	
Doc No. 107		Doc No. 247		Doc No. 411	✓	Doc No. 568	
Doc No. 111		Doc No. 248		Doc No. 412	✓	Doc No. 569	
Doc No. 112		Doc No. 255		Doc No. 417	✓	Doc No. 572	
Doc No. 114		Doc No. 261		Doc No. 420	✓	Doc No. 577	
Doc No. 139		Doc No. 262		Doc No. 422	✓	Doc No. 579	✓
Doc No. 140		Doc No. 263		Doc No. 424	✓	Doc No. 582	
Doc No. 141		Doc No. 264		Doc No. 425		Doc No. 583	
Doc No. 166	✓	Doc No. 265		Doc No. 426	✓	Doc No. 584	
Doc No. 177	✓	Doc No. 266		Doc No. 427		Doc No. 586	
Doc No. 181	✓	Doc No. 267		Doc No. 428		Doc No. 592	
Doc No. 182		Doc No. 268		Doc No. 429		Doc No. 594	
Doc No. 183	✓	Doc No. 269		Doc No. 433		Doc No. 596	✓
Doc No. 184	✓	Doc No. 270		Doc No. 434	✓	Doc No. 597	
Doc No. 187	✓	Doc No. 271		Doc No. 436	✓	Doc No. 598	
Doc No. 188	✓	Doc No. 274		Doc No. 445			
Doc No. 191	✓	Doc No. 275	✓	Doc No. 446			
Doc No. 193	✓	Doc No. 276		Doc No. 447			
Doc No. 194	✓	Doc No. 277		Doc No. 448			
Doc No. 195	✓	Doc No. 278		Doc No. 449			
Doc No. 196	✓	Doc No. 280		Doc No. 450			
Doc No. 197	✓	Doc No. 281		Doc No. 455	✓		
Doc No. 199		Doc No. 282		Doc No. 456			
Doc No. 204	✓	Doc No. 338		Doc No. 457	✓		
Doc No. 207		Doc No. 341		Doc No. 460			
Doc No. 208		Doc No. 344	✓	Doc No. 465	✓		
Doc No. 209	✓	Doc No. 348	✓	Doc No. 466	✓		
Doc No. 213		Doc No. 349		Doc No. 467	✓		
Doc No. 216		Doc No. 350	✓	Doc No. 472			
Doc No. 217		Doc No. 351	✓	Doc No. 484			

V = disclosed to SEC per 4/19 letter

Second List of Apparently Non-Privileged Documents by Document No.

Doc No. 611	Doc No. 810	Doc No. 1335
Doc No. 612	Doc No. 865	Doc No. 1336
Doc No. 613	Doc No. 1051	Doc No. 1337
Doc No. 616	Doc No. 1052	Doc No. 1338
Doc No. 617	Doc No. 1154	Doc No. 1378
Doc No. 618	Doc No. 1155	Doc No. 1379
Doc No. 620 ✓	Doc No. 1156	Doc No. 1404
Doc No. 622	Doc No. 1157	Doc No. 1410
Doc No. 631	Doc No. 1158	Doc No. 1411
Doc No. 638	Doc No. 1159	Doc No. 1412
Doc No. 641	Doc No. 1182	Doc No. 1413
Doc No. 664	Doc No. 1199	Doc No. 1414
Doc No. 671	Doc No. 1214	Doc No. 1419
Doc No. 679	Doc No. 1232	Doc No. 1444
Doc No. 687	Doc No. 1233	Doc No. 1462
Doc No. 702	Doc No. 1237	Doc No. 1463
Doc No. 704	Doc No. 1242	Doc No. 1521
Doc No. 708	Doc No. 1254	
Doc No. 709	Doc No. 1255	
Doc No. 710	Doc No. 1256	
Doc No. 712	Doc No. 1257	
Doc No. 713	Doc No. 1260	
Doc No. 721	Doc No. 1261	
Doc No. 724	Doc No. 1262	
Doc No. 725 ✓	Doc No. 1263	
Doc No. 726	Doc No. 1264	
Doc No. 727	Doc No. 1265	
Doc No. 730	Doc No. 1266	
Doc No. 734	Doc No. 1267	
Doc No. 735	Doc No. 1268	
Doc No. 736	Doc No. 1269	
Doc No. 737	Doc No. 1270	
Doc No. 738	Doc No. 1271	
Doc No. 740	Doc No. 1272	
Doc No. 746	Doc No. 1273	
Doc No. 753	Doc No. 1280	
Doc No. 771	Doc No. 1281	
Doc No. 784	Doc No. 1282	
Doc No. 789	Doc No. 1331	
Doc No. 791	Doc No. 1332	
Doc No. 798	Doc No. 1333	
Doc No. 799	Doc No. 1334	